

## **10595 PROCEDURES TO FOLLOW UPON ISSUANCE OF AN ADMINISTRATIVE LAW JUDGE’S DECISION**

- **Record:** The Region and the Division of Operations-Management shall record the case as closed as of the date that appears on the Region’s Closed Case Report.
- **Exception:** When backpay has been deposited in escrow, notification of closure should be held in abeyance pending disbursement of all backpay.

### **10594.12 Noncompliance With an Informal Settlement Agreement**

When a charged party subject to the compliance requirements of a settlement agreement allegedly engages in continuing or new unlawful conduct, the conduct may constitute noncompliance with the settlement or an independent violation of the Act. Complaints of noncompliance or of new unlawful conduct may be made during active compliance proceedings. Similarly, they may arise after the case has closed on compliance, as provisions of settlement agreements remain in effect even after closure of the case.

If the investigation discloses that the charged party failed to comply with provisions of an informal settlement agreement, the Regional Director will normally withdraw approval of the agreement and issue or reissue complaint.<sup>140</sup> In this event, the Region will need first to be able to establish that the charged party did indeed breach one or more terms of the settlement; it then should pursue the complaint on the basis of the underlying allegedly unlawful actions. The passage of time, of course, can make successful prosecution of the alleged unfair labor practices more difficult. The Region can protect itself against this difficulty by incorporating default language in the settlement agreement that will constitute a waiver of the charged party’s right to contest the validity of a related complaint, reserving its right only to defend against the allegation that it breached the settlement.<sup>141</sup> Such language is especially appropriate where the Region anticipates that respondent is likely to be unwilling or unable to fulfill its commitments, or the settlement provides for a substantial make-whole remedy and/or installment payments. Section 10594.7. ULP Manual Section 10152.

### **10595 Procedures to Follow Upon Issuance of an Administrative Law Judge’s Decision**

When the General Counsel decides not to file exceptions to an administrative law judge’s decision, the Region should immediately obtain the positions of the parties on voluntary compliance.

When the charged party agrees to comply and no exceptions are to be filed, the Region should request in a letter that respondent begin to take steps to comply with the administrative law judge’s decision, including, but not limited to, posting the Notice to Employees, offering reinstatement and expunging files. The letter should also ask for any documents that will be needed to calculate backpay or any other monetary remedy.

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<sup>140</sup> If the notice contains a provision that “WE WILL NOT in any [other] [like or related] manner interfere with your rights under Section 7 of the Act,” the Region should consider setting aside the settlement even if subsequent conduct, though similar, does not violate the letter of one of the explicit provisions of the notice, but constitutes “like or related” conduct. In the alternative, inclusion of the broad Section 7 guarantees below the heading of the notice, followed immediately by the provision “WE WILL NOT do anything to prevent you from exercising the above rights” would also serve this purpose.

<sup>141</sup> See Appendix 12 for sample default language. The Board, by summary judgments, approved similar language in *SAE Young Westmont-Chicago, LLC*, 333 NLRB No. 59 (2001) (not reported in Board volume), No. 01-2328 (7th Cir. 2001), and *Ernest Lee Tile Contractors, Inc.*, 330 NLRB No. 61 (2000) (not reported in Board volume).

## **10596 PROCEDURES TO FOLLOW UPON ISSUANCE OF BOARD ORDER**

Compliance actions taken prior to the Board order, including any period of the notice posting, should be accorded full recognition as compliance with the Board order.

Should the charged party not agree to comply and/or exceptions are to be filed, the Region should:

- Continue to pursue compliance or settlement.
- Continue to monitor the viability of respondent by reviewing any information submitted by the charging party and/or discriminatee regarding the viability of respondent, run a database search (AutoTrak) for respondent and respondent's principals to see if the corporation is in good standing and that affiliated companies have not been formed, and begin an investigation if necessary.
- Maintain contact with discriminatees through quarterly requests for information from which backpay could be calculated.
- Update backpay calculations.

## **10596 Procedures To Follow Upon Issuance of Board Order**

The Compliance Officer should initiate compliance action with its remedial provisions as soon as a Board order issues by:

- Providing respondent with a copy of the Board's order and requesting, in writing, that respondent begin to take steps to comply with the Board's order to implement any of the affirmative provisions, including, but not limited to, posting the Notice to Employees, offering reinstatement, and expunging files. The letter should also ask for any documents that will be needed to calculate backpay or any other monetary remedy.
- Update backpay calculations.
- If possible, negotiate settlement pursuant to remedy ordered by the Board.
- Continue to monitor the viability of respondent by reviewing any information submitted by the charging party and/or discriminatee regarding the viability of respondent, run a database search (AutoTrak) for respondent and respondent's principals to see if the corporation is in good standing and that affiliated companies have not been formed, and begin an investigation if necessary.

## **10598 Determination of Compliance With an Unenforced Board Order**

If the Region determines respondent has fully complied with the Board's Order, a preclosing letter should be sent to the charging party soliciting its position on compliance. If the charging party has no objections, the case should be closed. If the charging party has objections, the objections should be investigated and a Regional determination made. If the Region determines the objections are without merit, the charging party has a right to a compliance determination.